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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/556,455	11/10/2005	David J. Chatting	36-1948	1307

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EXAMINER	
RUSH, ERIC	

ART UNIT	PAPER NUMBER
2624	

MAIL DATE	DELIVERY MODE
12/10/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/556,455	CHATTING ET AL.	
	Examiner	Art Unit	
	Eric Rush	2624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 November 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *10 November 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *10 November 2005*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. With respect to claim 1: Claim 1 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 5 of copending Application No. 10/556,459. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of the instant application is broader in scope than claims 1 & 5 of the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

With respect to claims 2 – 5: Claims 2 – 5 are also provisionally rejected on the same ground of non-statutory obviousness-type double patenting as being dependent upon a rejected base claim, but would be withdrawn from the rejection if their base claims overcome the provisional rejection by the timely filing of a terminal disclaimer.

3. Claim 6 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 9 and 13 of copending Application No. 10/556,459. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 6 of the instant application is broader in scope than claims 9 & 13 of the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

With respect to claims 7 – 8: Claims 7 – 8 are also provisionally rejected on the same ground of non-statutory obviousness-type double patenting as being dependent upon a rejected base claim, but would be withdrawn from the rejection if their base claims overcome the provisional rejection by the timely filing of a terminal disclaimer.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 4 – 5 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claimed invention appears to be directed towards a computer program, which is not patentable eligible subject matter. Any computer executable software code must be stored in a computer readable storage medium to enable the underlying functionality. A structural and functional interrelationship between the computer program and the structural elements of the computer, which would permit its functionality to be realized, should be included in the claim. An example of acceptable language under 35 U.S.C. 101 would be "a computer readable medium storing a computer program...".

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 and 4 – 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Takayuki Fujiwara, Takeshi Nishihara, Masafumi Tominaga, Kunihito Kato, Kazuhito Murakami and Hiroyasu Kshimizu, "On the Detection of Feature Points of 3D Facial Image and Its Application to 3D Facial Caricature", 3-D Digital imaging and Modeling,

1999, proceedings, Second international Conference on Ottawa, Ont., Canada 4 – 8 October 1999, pages 490-496.

- With regards to claims 1 and 4 - 6, Fujiwara et al. teach a method, system, and computer program for generating a caricatured image, (Fujiwara et al., Page 490 Section 1) comprising the steps of: determining a caricature level value in dependence on an intended size of the caricatured image to be generated; (Fujiwara et al., Page 491 Section 2.2 Paragraph 3 - Paragraph 6, specifically, "the face data is normalized by Affine transform for adjusting several kinds of input faces. Through this preprocessing, the input data P3d are available to introduce the 'average 3D face' S3d....", and Page 494 Section 4, the amount of caricaturing is directly dependent upon the size, amount of feature points, used) and generating the caricatured image using the caricature level value thus determined. (Fujiwara et al., Page 494 Section 4)

7. Claims 1 – 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Massarsky U.S. Patent No. 6,385,628.

- With regards to claims 1 and 4 - 6, Massarsky teaches a method, system, and computer program for generating a caricatured image, (Massarsky, Column 5 Lines 25 - 36) comprising the steps of: determining a caricature

level value in dependence on an intended size of the caricatured image to be generated; (Massarsky, Column 6 Lines 20 – 65, Column 6 Line 66 – Column 7 Line 4, Massarsky discloses adjusting the scale which would alter the caricature image by stretching and/or condensing the image) and generating the caricatured image using the caricature level value thus determined. (Massarsky, Column 7 Lines 5 - 16)

- With regards to claims 2 and 7, Massarsky teaches a method and system according to claims 1 and 6, respectively, wherein the determining step further comprises determining the caricature level value as a generally inverse function of the intended size of the caricatured image to be generated. (Massarsky, Column 6 Lines 40 – 67, specifically lines 40 - 55, Massarsky discloses using an inverse transform of the caricatured image to implement the warping effect)

- With regards to claims 3 and 8, Massarsky teaches a method and system according to claims 2 and 7, respectively, wherein the function is applied over at least a sub-range of the possible range of intended sizes of the caricatured image to be generated. (Massarsky, Column 5 Lines 38 – 67, the function of Massarsky is carried out over the selected control points of the image which encompass at least a sub-range of the sizes of the caricatured image that could be generated)

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Shum et al. U.S. Publication No. US 2005/0100243 A1; which is directed to an automatic facial sketch generation system.
- Kim et al. U.S. Publication No. 2003/0206171 A1; which is directed to an apparatus and method for creating three-dimensional caricatures.
- Vachette et al. EP 0 990 979 A1; which is directed to an image transformation device for producing caricatures.
- Hayes, Jr. et al. U.S. Patent No. 5,960,099; which is directed to a system and method for creating a digitized likeness of persons.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Rush whose telephone number is (571) 270-3017. The examiner can normally be reached on 7:30AM - 5:00PM (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samir Ahmed can be reached on (571) 272-7413. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ER

SAMIR AHMED
SUPERVISORY PATENT EXAMINER